

~~2008 Rev. 12/06 Subpoena in a Civil Case~~

**Issued by the
UNITED STATES DISTRICT COURT**

DISTRICT OF

NEVADA

PHASE II CHIN, LLC, et al.

SUBPOENA IN A CIVIL CASE

v.

FORUM SHOPS, LLC, et al.

Case Number:¹ 2:08-cv-00162-JCM-GWF

TO: Jan Marks, CFO or Custodian of Records, Pure Nightclub/Pure Management Group, 5555 Badura, Ste. 120, Las Vegas, NV 89118, 702-731-773.

- YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

- YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

SEE ATTACHMENT A.

PLACE	Hunlerton & Associates, 333 South Sixth Street, Las Vegas, NV 89101 (702)388-0098	DATE AND TIME
		10/8/2009 10:00 am

<input type="checkbox"/> YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.	DATE AND TIME
PREMISES	

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) *Plaintiff* DATE *9/16/08*

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Loren Oliveros, Esq., 201 12th Street NW, Albuquerque, NM 87102
(505) 244-0214

¹ See Rule 45, Federal Rules of Civil Procedure. Subdivisions (a), (b), and (c), on next page¹ If action is pending in district other than district of issuance, state district under case number

EXHIBIT

A

AOSS (Rev. 12/06) Subpoena in a Civil Case

PROOF OF SERVICE		
DATE	PLACE	MANNER OF SERVICE
SERVED 09/17/09	5555 Beldonna, Ste 120 Las Vegas, NV 89118	Personal through Diane Peterson
SERVED BY (PRINT NAME) <u>Howard Saxon</u>	TITLE <u>Process Server</u>	
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.		
Executed on <u>09/17/09</u>	DATE <u>Howard Saxon</u> SIGNATURE OF SERVER	
ADDRESS OF SERVER <u>601 S 10th St., Ste 101</u> <u>Las Vegas, NV 89101</u>		

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and present evidence, documents, testimony, or things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspecting the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel its compliance, including, if necessary, lifting, or quashing such an order to compel, if it protects any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(C) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed, or regularly transacts business in person except that, subject to the court's claim that it will not interfere with a person's right to attend trial, it may command a person to travel to any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretired expert's opinion or deliberation not describing specific events or occurrences in dispute and resulting from the expert's study made at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, enjoin or modify the subpoena or, if the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assumes that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(D) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(E) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(F) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nevertheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(G) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made explicitly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party discloses the information before being通知, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(H) Consequence. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (e)(3)(A).

C O P Y

1 GORENCE & OLIVEROS, P.C.
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2 Louren Oliveros, No. NM 14689
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3 Albuquerque, NM 87102
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6 Attorneys for Plaintiff Love & Money, LLC
(formerly dba O.P.M.L.V., LLC)
7 (*Pro Hac Vice*)

8 BOWLES & CROW
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13 Attorneys for Plaintiff Phase II Chin, LLC
14 (*Pro Hac Vice*)

15 HUNTERTON & ASSOCIATES
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20 Attorneys for Plaintiff Love & Money, LLC
20 and Plaintiff Phase II Chin, LLC
21 (*Local Counsel*)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PHASE II CHIN, LLC and LOVE & MONEY, LLC (formerly dba O.P.M.L.V., LLC),

Plaintiffs,

v.

FORUM SHOPS, LLC, FORUM
DEVELOPERS LIMITED PARTNERSHIP,
SIMON PROPERTY GROUP LIMITED
PARTNERSHIP, SIMON PROPERTY
GROUP, INC., CAESARS PALACE CORP.,
and CAESARS PALACE REALTY CORP.

Defendants.

Case No. 2:08-cv-00162-JCM-GWF

**NOTICE OF ISSUANCE OF SUBPOENA
DUCES TECUM TO JAN MARKS,
CFO/CUSTODIAN OF RECORDS, PURE
NIGHTCLUB / PURE MANAGEMENT
GROUP**

AND RELATED ACTIONS.

14 TO: All Parties; and

15 | TO: All Counsel of Record

16 PLEASE TAKE NOTICE that the LOVE & MONEY, LLC has issued a Subpoena Duces
17 Tecum for service upon JAN MARKS, CFO OR CUSTODIAN OF RECORDS, PURE
18 NIGHTCLUB/PURE MANAGEMENT GROUP, 5555 BADURA, STE. 120, LAS VEGAS, NV
19 89118, 702-731-7733. The testimony and production of documents are to take place October 8, 2009
20 at the hour of 10:00 a.m. at the offices of Hunterton & Associates, 333 South Sixth Street, Las Vegas
21 NV 89101, pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure. The documents
22 requested are described in the subpoena, a copy of which is attached hereto. Personal appearance is
23 not required; the documents requested may be delivered in lieu of appearance.
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DATED this 16th day of September, 2009.

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GORENCE & OLIVEROS, P.C.
Robert J. Gorence, No. NM 981
Louren Oliveros, No. NM 14689
201 12th Street, NW
Albuquerque, NM 87102

Attorneys for Plaintiff Lowe & Money, LLC
(formerly dba O.P.M.L.V., LLC)
(Pro Hac Vice)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of September, 2009, I deposited in the United States Mail at Albuquerque, New Mexico, a true and correct copy of the foregoing enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

Samuel S. Lionel
Charles H. McCrea, Jr.
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Las Vegas, Nevada 89101
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Attorneys for Defendants Forum Shops, LLC, Forum Developers Limited Partnership, Simon Property Group Limited Partnership and Simon Property Group, Inc.

Steve Morris
MORRIS PETERSON
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300 So. Fourth Street
Las Vegas, Nevada 89101
sm@mortislawgroup.com

Attorneys for Defendants Caesars Palace Corp., and Caesars Palace Realty Corp.

Louren Oliveros
Gorence & Oliveros, P.C.

EXHIBIT A

All reports, lists, logs, memoranda, ledgers, publications, meeting minutes, recordings, advertisements, brochures, manuals, citations, complaints, photographs, videos, correspondence, documents or things reflecting or related to the following:

1. Incidents of disorderly or disruptive conduct, intoxication or violence of any degree or kind occurring at or involving Pure Nightclub from 2004 through 2009;
2. Security issues or incidents at Pure Nightclub from 2004 through 2009;
3. The number of security guards employed per night during specials events at Pure Nightclub from 2004 through 2009;
4. The number of security guards employed/hired per night on average at Pure Nightclub from 2004 through 2009;
5. Line or crowd control procedures or protocols utilized at Pure Nightclub from 2004 through 2009;
6. The wall or door that was utilized to close off The Forum Shops and Poetry Nightclub's access to Caesars Casino beginning in 2007;
7. The dress code enforced at Pure Nightclub from 2004 through 2009;
8. The shooting at Caesars Palace in August, 2007;
9. Training for security guards at Pure Nightclub from 2004 through 2009;
10. Communication or documents of any kind, including without limitation, all electronic data (emails, texts, or data from any other electronic device), computer or laptop hard or soft drive communications or documents between any representative, agent, or employee of Pure Management Group, including but not limited to Robert Frey and Steve Davidovici, and Caesars Casino, Caesars Palace Realty Corp., or Caesars Palace Corp., Gary Selesner, or any representative, agent or employee thereof regarding O.P.M.L.V./Poetry Nightclub;

11. Communication or documents of any kind, including without limitation, all electronic data (emails, texts , or data from any other electronic device), computer or laptop hard or soft drive communications or documents between any representative, agent, or employee of Pure Management Group, Including but not limited to Robert Frey and Steve Davidovici, and The Forum Shops/Simon Property Group, Gary Lewis, David Simon, Rich McKeown, or any representative, agent, or employee thereof regarding O.P.M.L.V./Poetry Nightclub;
12. Marketing or advertisements revealing any form of nudity distributed for Pure Nightclub from 2004 through 2009;
13. Contracts between Pure Nightclub and Caesars Casino, Caesars Palace Realty Corp. or Caesars Palace Corp. from 2004 through 2009; and
14. Contracts between Pure Nightclub and The Forum Shops/Simon Property Group from 2004 through 2009.